

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF WEST VIRGINIA  
AT CHARLESTON

CORY A. SIMPSON,

Petitioner

v.

Civil Action No. 2:10-0972

JUDGE (CIRCUIT) CHARLES KING and  
THE STATE OF WEST VIRGINIA,

Respondents

MEMORANDUM OPINION AND ORDER

Pending is a petition for writ of habeas corpus  
pursuant to 28 U.S.C. § 2254 filed August 2, 2010.

This action was previously referred to Mary E. Stanley,  
United States Magistrate Judge, who, on September 1, 2010,  
submitted her Proposed Findings and Recommendation ("PF&R")  
pursuant to the provisions of 28 U.S.C. § 636(b)(1)(B).

The magistrate judge recommends that the court dismiss  
the section 2254 petition without prejudice pending exhaustion of  
available state remedies. On September 7, 2010, petitioner  
objected. Petitioner first essentially asserts that he would not  
receive a fair hearing respecting any state court petition  
seeking bail. The contention is based upon supposition alone and

petitioner's view that he "would have better chances of receiving a fair judgment in" this court. (Pet.'s Obje. at 1).

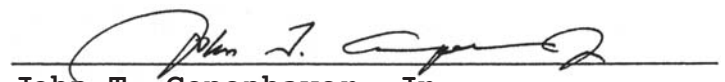
Second, petitioner asserts he has pending in state court a habeas corpus petition filed June 18, 2010. Even assuming, arguendo, the span of time between the filing of the state petition and the instant petition constitutes delay, the delay does not excuse petitioner from pursuing his state remedies to advance a ruling by the state court on his pending state habeas corpus request.

Based upon the foregoing discussion, the court concludes that the objections are meritless. It is, accordingly, ORDERED as follows:

1. That the PF&R be, and it hereby is, adopted by the court and incorporated herein; and
2. That the section 2254 petition, and this action, be, and they hereby are, dismissed without prejudice.

The Clerk is directed to forward copies of this written opinion and order to all counsel of record, any unrepresented parties, and the magistrate judge.

DATED: September 14, 2010

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John T. Copenhaver, Jr.  
United States District Judge